

***United States Court of Appeals
for the Second Circuit***



APPENDIX

74-1550

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IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NO. 74-1550

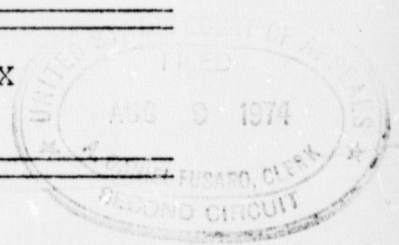
THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,
-against-
CARMINE TRAMUNTI, et al.,
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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DEFENDANTS-APPELLANTS' JOINT APPENDIX
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	:	
UNITED STATES OF AMERICA	:	
-v-	:	OPINION AND ORDER
CARMINE TRAMUNTI, et al.,	:	73 Cr. 1099
(John Springer),	:	
Defendants.	:	
-----X	:	

KEVIN THOMAS DUFFY, D.J.

A motion was made by the defendant John Springer to suppress certain narcotics and other paraphernalia seized when he was arrested on December 3, 1973. The circumstances surrounding that seizure are as follows:

A telegram was sent to defendant John Springer instructing him to appear for the first pretrial conference in this case on November 16, 1973. The defendant did not appear either in person or by counsel. A second telegram was sent on November 19, 1973, instructing the defendant to appear on November 26, 1973, at 10:00 a.m., in the courtroom I was then assigned to, 519. This second telegram reiterated the warning of the first telegram that "failure to appear will result in the issuance of a warrant for arrest."

When John Springer again failed to appear at the appointed time, a bench warrant was issued. However, that

warrant was vacated when the defendant appeared an hour and a half later. Having finally arrived at the Courthouse, the defendant met with the Assistant United States Attorney and informed him that he was represented by counsel. Springer was then told to have his attorney contact the Assistant. When a few days passed without any word from an attorney for Springer, the Assistant telephoned the attorney whose name had been given to him by the defendant. This attorney stated that he was uncertain as to whether or not he would represent Springer. The Assistant then asked him to file a notice of appearance if he did decide to represent the defendant.

When no notice was filed within a reasonable period, a third telegram was sent to Springer instructing him to appear on December 3, 1973, at 9:30 a.m., in my courtroom. Springer failed to appear and I issued a bench warrant for his arrest. The bench warrant was turned over by the government to the New York City Police Department. Detective O'Boyle and other officers went to execute the warrant, going first to the apartment where the defendant's wife resided.

The police gained entrance to the apartment house when the front door was opened for them by the defendant's teenage son. Detective O'Boyle climbed the stairs to the second floor apartment and saw a woman standing by the apartment door. He identified himself as a police officer and the

woman, who was later identified as the defendant's wife, opened the apartment door and said something to the defendant. When the door was thus opened, Detective O'Boyle recognized the defendant standing in the kitchen area of the apartment. On the table in front of the defendant he noticed some tin foil and a white powdery substance.

The door was slammed shut and Detective O'Boyle requested the defendant's wife to open it. She did not respond but she did stand aside when asked to do so. Detective O'Boyle and his fellow officers broke down the door.

On entering the apartment, Detective O'Boyle saw pieces of tin foil and a white powder on the kitchen counter. Detective Wykowski had been first to enter the apartment and he arrested the defendant Springer in the bathroom. The police officers seized the white powder, aluminum foil and other paraphernalia, which were in plain view in the kitchen and on the bathroom floor.

Thereafter, the police also looked into the other rooms of the apartment, apparently to ascertain whether there were any other adults present. They discovered a lady neighbor in one bedroom and one of the defendant's children watching TV in the living room. Apparently, after sometime, the defendant offered a bribe to Detective O'Boyle. At this time Springer was being detained in one of the bedrooms of

the apartment. The detective feigned interest and the defendant called his wife into the room. He whispered something to his wife. She left the room and returned with a brown paper bag containing \$1,000, which was proffered to the detectives as a bribe. The detectives then arrested the defendant's wife and called the local precinct for a policewoman to search her. The policewoman arrived, and the defendant and his wife were taken from the apartment.

Springer now moves to suppress the narcotics seized in his wife's apartment on the night of his arrest and also the money with which he tried to bribe the officers. He argues that he had never received the third telegram sent to him requiring his appearance at the courthouse and that therefore there were no reasonable grounds for the issuance of the bench warrant.

I find otherwise. It is unnecessary for me to determine whether, in fact, the telegrams were delivered to the defendant Springer. More than ^{sufficient} cause for the issuance of the post-indictment bench warrants lies in the attempts to contact the defendant and his failures to appear. See Rule 9(a) of the Federal Rules of Criminal Procedure.

I further find that the execution of the bench warrant was proper and since I also find that the white powder

was in full view of the arresting officers its seizure was properly made incident to the arrest.

The motion for suppression is denied in all respects. The defendant can object to the offer of this evidence at the trial on the grounds of relevancy. A ruling will be made as to that objection at the trial after I have had an opportunity to determine its relevancy.

SO ORDERED.

U. S. D. J.

Dated: New York, New York
January , 1974.